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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

JOSEPH A. PAKOOTAS, an individual
and enrolled member of the Confederated
Tribes of the Colville Reservation; and
DONALD R. MICHEL, an individual and
enrolled member of the Confederated
Tribes of the Colville Reservation, and
THE CONFEDERATED TRIBES OF
THE COLVILLE RESERVATION,

Plaintiffs,

And

STATE OF WASHINGTON,

Plaintiff-Intervenor

v.

TECK COMINCO METALS, LTD., a
Canadian corporation,

Defendant.

NO. CV-04-0256-LRS

STIPULATION AND AMENDED
PROTECTIVE ORDER PROVIDING
FOR "ATTORNEY'S EYES ONLY"
DESIGNATION

I. STIPULATION

Plaintiffs Joseph A. Pakootas, Donald R. Michel, and the Confederated Tribes of the Colville Reservation ("Plaintiff" or the "Tribes"), Plaintiff and Counterclaim Defendant State of Washington (the "State"), and Defendant and Counter-Claimant Teck

AMENDED PROTECTIVE
ORDER FOR "ATTORNEY'S EYES ONLY"
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1 Cominco Metals Ltd. ("Defendant" or "Teck") (collectively, "the Parties"), respectively
2 submit the following Stipulation and Proposed Amended Protective Order for
3 consideration and entry by the Court.

4 II. FACTUAL BACKGROUND

5 On November 19, 2009, the Court entered a Protective Order ("November Order")
6 providing a means of designating certain documents as confidential. *See* Court Docket
7 No. 406. Paragraph 14 of the November Order provides that if the Parties agree that
8 certain documents should not be disclosed beyond the other Parties' inside or outside
9 counsel, the parties should attempt to reach an agreement as to the treatment of
10 "Attorney's Eyes Only" materials.

11 As the Court knows, Defendant has requested by way of a Freedom of Information
12 Act request certain documents from the Bureau of Indian Affairs ("BIA") that the Tribes
13 claim are held as a bailment. *See* matter of *Teck Metals, Ltd. v. United States Bureau of*
14 *Indian Affairs*, cause no. CV-09-290-LRS. The Court has issued an Order in that
15 matter, which required BIA to produce an index of the documents for review by the
16 Parties. *Id.*, Docket No. 38. In reviewing the index provided by the BIA, the Tribes have
17 confirmed that certain documents contain highly sensitive and proprietary information
18 related to subsurface mineral deposits located on the Colville Indian Reservation. These
19 documents contain commercially sensitive materials that are extremely valuable to the
20 Tribes. As such, the Tribes seek to take the upmost caution in producing these
21 documents.

22 The Tribes have requested that a mechanism for designating these documents as
23 "Attorney's Eyes Only" materials be created, and Defendant has agreed to such
24 designation pursuant to the provisions set forth below and the Parties request that the
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ORDER FOR "ATTORNEY'S EYES ONLY"
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November Order be modified by this stipulation of the parties, as approved by the Court pursuant to Paragraph 33 of the November Order.

III. SUPPLEMENTAL PROTECTIVE ORDER

Accordingly, the Protective Order, issued by the Court on November 19, 2009 (November Order), shall be amended as follows:

DESIGNATION AND TREATMENT

OF

"ATTORNEY'S EYES ONLY" DOCUMENTS AND INFORMATION

37. Material or testimony that a party considers to contain trade secrets, proprietary, or commercially sensitive materials, including mining related geological and geophysical information, may be designated for "Attorney's Eyes Only" treatment pursuant to Paragraphs 38 through 46 of this Amended Order.

38. The designation of discovery material as "Attorney's Eyes Only" shall be made in the following manner:

a. In the case of documents or other materials (apart from depositions or other pretrial testimony) by affixing the legend "Attorney's Eyes Only" to each page containing any "Attorney's Eyes Only" material, except that in the case of multi-page documents bound together by staple or other permanent binding, the designation "Attorney's Eyes Only" need only be stamped on the first page of the document in order for the entire document to be treated as "Attorney's Eyes Only"; and

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1 b. In the case of depositions or other pretrial testimony: (i) by a
2 statement on the record, by counsel, at the time of such disclosure, at which time all
3 non-counsel and experts/consultants (other than those permitted access pursuant to
4 Paragraph 40 below) shall be excused from the room for the duration of the "Attorney's
5 Eyes Only" testimony; or (ii) by written notice, sent by counsel to all parties within thirty
6 (30) days after receiving a copy of the transcript thereof; and (iii) in both of the foregoing
7 instances, by directing that testimony designation "Attorney's Eyes Only" legend be
8 affixed to the first page of the original and to all copies of the transcript containing any
9 "Attorney's Eyes Only" material and that the portion of the transcript containing any
10 "Attorney's Eyes Only" material shall be bound separately.

11 39. Any material or testimony that is marked "Attorney's Eyes Only" may not
12 be disclosed, summarized, described, characterized or otherwise communicated or made
13 available in whole or in part except to the following individuals:

14 a. outside counsel and staff, etc. who represent parties in this action,
15 and experts and consultants in this litigation provided access in compliance with
16 Paragraph 40 below;

17 b. the Court, provided that all filings of "Attorney's Eyes Only"
18 materials are made under seal; and

19 c. a deponent who saw the document before it was produced in this
20 case in the course of a deposition as provided for in Paragraph 10 of the November
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22 AMENDED PROTECTIVE
23 ORDER FOR "ATTORNEY'S EYES ONLY"
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1 Order. For the purpose of this provision, the designation "Attorney's Eyes Only" shall be
 2 substituted for the designation "Confidential" in Paragraph 10 of the November Order.

3
 4 40. Documents designated for "Attorney's Eyes Only" treatment may only be
 5 made available to those experts and consultants who have the need to review them for
 6 purposes of this litigation. Such consultants and experts shall only be provided with
 7 access to "Attorney's Eyes Only" material, or information contained therein, after counsel
 8 has confirmed their understanding and agreement to abide by the terms of this Protective
 9 Order by signing a copy of the Written Assurance attached hereto.
 10

11 41. Entering into, agreeing to and/or producing or receiving "Attorney's Eyes
 12 Only" material or otherwise complying with the terms of this Protective Order shall not:
 13

14 a. operate as an admission by any party that any particular "Attorney's
 15 Eyes Only" material contains trade secrets, proprietary , or commercially sensitive
 16 materials, including mining related geological and geophysical information;

17 b. limit the right of any part to object to the production of documents it
 18 considers not subject to discovery or to challenge any objection asserted by any other
 19 party; or
 20

21 c. prevent the parties subject to this Protective Order from agreeing to
 22 alter or waive the provisions or protections provided for herein with respect to any
 23 particular discovery material.
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AMENDED PROTECTIVE
 ORDER FOR "ATTORNEY'S EYES ONLY"
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1 d. waive the right of a party to designate a document for "Attorney's
2 Eyes Only" notwithstanding that document's unintentional release without such
3 designation, so long as the document is promptly designated and opposing counsel is
4 promptly informed.
5

6 42. This Protective Order has no effect upon, and shall not apply to, the Parties'
7 use of their own "Attorney's Eyes Only" material for any purpose.
8

9 43. In the event additional parties join or are joined in this action, their counsel,
10 experts or consultants shall not have access to "Attorney's Eyes Only" material until the
11 newly joined party by its counsel has executed and, at the request of any party, filed with
12 the Court its recognition of and agreement to be fully bound by this Amended Order and
13 the November Order.
14

15 44. At the completion of all litigation, materials designated as "Attorney's Eyes
16 Only" shall be returned or disposed of subject to the requirements of Paragraph 22 of the
17 November Order.
18

19 45. Any disputes as to the designation of materials as "Attorney's Eyes Only"
20 not resolved as set out in Paragraph 40 of this Amended Order, shall be resolved as set
21 out in Paragraph 9 of the November Order. For the purpose of this provision, the
22 designation "Attorney's Eyes Only" shall be substituted for the designation "Confidential"
23 in Paragraph 9 of the November Order.
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AMENDED PROTECTIVE
ORDER FOR "ATTORNEY'S EYES ONLY"
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47. Except as specifically modified by Paragraphs 37 through 46 of this Amended Order, the November Order shall remain unchanged.

Dated this 6th day of July, 2010.

Lonny R. Suko
Chief United States District Court Judge

DATED this 1st day of July, 2010.

By s/Paul J. Dayton

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AMENDED PROTECTIVE
ORDER FOR "ATTORNEY'S EYES ONLY"
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WRITTEN ASSURANCE

_____ declares as
follows:

I have read the Supplemental Protective Order (Order) dated

_____ of record in the above-referenced matter.

I agree to comply with and be bound by the provisions of the Order;

I will keep in confidence, and will not divulge to anyone other than those
permitted to have access under the terms of said Order, copy, or use except solely for the
purposes of this Litigation, any information, documents, or tangible things designated
"Attorney's Eyes Only" under the Order;

I hereby agree to keep any and all knowledge and information related to Tribal
subsurface mineral depositions, mining activities, practices, and the like in the strictest

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1 confidence, and will not use this information or knowledge in any form or fashion
2 beyond this litigation.

3
4 I hereby consent to venue and jurisdiction in the United States District Court,
5 Eastern District of Washington at Yakima with regard to any proceeding to enforce the
6 terms of this Order. I realize that any violation of the Order may subject me to sanctions
7 by the Court, including punishment for civil contempt.

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9 I declare under penalty of perjury that the foregoing is true and correct. Executed
10 this _____ day of _____, 2010.

11 _____
12 Signature

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AMENDED PROTECTIVE
ORDER FOR "ATTORNEY'S EYES ONLY"
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